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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,788	02/13/2001	Paul Edward Cheney	F7414(C)	1446

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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1764

MAIL DATE	DELIVERY MODE
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06/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/600,788

Applicant(s)

CHENEY ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-12 and 18 is/are allowed.
- 6) ☒ Claim(s) 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 16, 2003 has been entered.

2. Claims 7-12 and 15-17 remain. Claim 18, which was added in the examiner's amendment of 4-14-2003 remains as well as the claim amendment to Claim 7 and Claim 10. Applicant's representative is thanked for the assistance and discussion of the frozen particulated food product "Dippin Dots" discussed in the June 11, 2007 telephone interview. The examiner has found the Dippin Dots patent, and is citing this reference on the PTO 892 form.

3. Claims 7-13 and 18 remain allowable.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemmings in combination with Jones.

Clemmings USP 5,620,732 teaches a method of making and ice cream product which can be stored without requiring a hardening step which includes preparing an ice cream composition and adding an anti-freeze protein to the mixture of ice cream ingredients which is stored at temperature of -10 °F to 20 °F. [Note Column 3, lines 24-68 and Column 4, lines 24-53] Specifically Clemmings teaching adding antifreeze proteins (peptides) to an ice cream composition the ice cream composition is cooled to a temperature of no colder than -30°F, and that the composition can be stored and does not require a cold hardening step.

However, Clemmings does not teach that the ice cream is particulate and /or freely flowing.

Jones teaches a method of preparing a storing a free flowing frozen ice cream product. The product is commercially known as "Dippin Dots", the process of preparing the free flowing frozen product includes preparing an ice composition which is suitable for freezing, dripping the composition into a freezing chamber, freezing the dripping alimentary composition into beads and then storing the beds.[Note Claim 1 of Jones]. The freezing takes place using a liquid nitrogen refrigerant and at temperatures below -260°F. Jones teaches that the low temperature freezing process provides a product,

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which does not include large ice crystals and provides a product, which is free flowing. The composition of the ice creams is dairy based and can included sugar and other additives for flavor.[Note Column 1, lines 30-65] There is no mention that an antifreeze protein is used in the ice cream but there appears to be no criticality in the ice cream or alimentary composition which is to be frozen.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the ice cream composition taught in Clemmings which includes the antifreeze proteins (peptides) for the ice cream composition of Jones to provide a freely flowing ice cream composition which is substantially the same product as being claimed by applicant. It is maintained that the substitution of compositions is permissible and not precluded by the teachings of Jones who teaches that the alimentary composition need be dairy based and can include sugar and other additives.[Note Column 1, lines 62-65 and Column 4, lines 56-62].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Mondays- Fridays from 9:30AM to 6:00PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.


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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
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